THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.22601 of 2002

Dated: 04.07.2007

Between:

M/s.VLG Mallesham and Co.,

... Petitioner

AND

The Joint Collector,
Karimnagar District.

... Respondent

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.22601 of 2002

ORDER:-

This writ petition is filed for a writ of mandamus to set aside the proceedings dated 6.11.2002 issued by respondent in No.G6/2312/2002 whereby petitioner's license under Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order 1980 (for short '1980 Order') was suspended.

The petitioner is a licencee under 1980 Order to purchase, sell or store for sale motor spirit, HSD Oil and kerosene. The petitioner's licence was suspended under Clause-28(2) of the 1980 Order pending enquiry. This order is assailed in the present writ petition.

Heard Sri Sridhar Reddy, learned counsel for the petitioner and the learned Assistant Government Pleader.

Learned counsel for the petitioner submitted that under Clause 28(2) of the 1980 Order initiation of action for cancellation of a licence under clause 28(1) is *sine qua non* and that since no action was initiated by the respondent before passing the impugned order, the order of suspension is in contravention of the provisions of Clause 28(2) of the 1980 Order. In support of his contention the learned counsel relied upon the judgments of this Court in **Narsimha Oil Supplies, IOC, Nadadavolu, West**

Godavari District Vs. Joint Collector, West Godavari[1].

The learned Assistant Government Pleader for Civil Supplies on the other hand submitted that under Clause 28(2) action for cancellation of a licence and suspension of licence pending such an action can be initiated simultaneously and that therefore, the order impugned in the writ petition does not call for interference. In support of her submission she placed reliance on the Judgment of this Court in **Gummadisetti Vs. Joint Collector, Khammam**[2].

In **Narsimha Oil Supplies (1 supra)** the learned Single Judge of this Court, following the Division Bench Judgment of this Court in **Commissioner of CS, Hyderabad Vs. Radha Automobiles**[3] and similar other judgments on the point held that after receipt of the report of the competent police officer, initiation of action under Clause 28(1) is necessary before passing an order of suspension under Clause 28(2) of the 1980 Order. The learned Judge held that in a given case issue of a show cause notice would be sufficient to show that action was initiated and pending under clause 28(1). However in **Gummadisetti (2 supra)** the Division Bench which considered the earlier Division Bench judgment in **Commissioner of CS, Hyderabad (3 supra)** and also a judgment of this Court in **A.Srirama Murthy Vs. Joint Collector, Visakhapatnam and Others**[4] held as under:

> " 9. The observations made by the Division Bench have to be construed and understood in the proper perspective. The observations made by the Division Bench do not support the contention put forth by the learned Counsel for the appellant

that unless a show-cause notice has been issued prior to passing of the order under sub-clause (1) of Clause 28, no action could be initiated or order be passed under sub-clause (2) of Clause 28 of the Control Order. All that the Division Bench observed is that the law required initiation of action and the same should be pending as on the date of passing of the interim suspension under sub-clause (2) of Clause 28 of the Control Order. It means that an action can be initiated both under sub-clause (1) of Clause 28 and as well as under sub-clause (2) of Clause 28 simultaneously.

10. The very expression used in the impugned order that "pending enquiry interim suspension of the licence has been made" itself suggests that action has been conceived and initiated against the appellant herein under sub-clause (1) of Clause 28. The same is followed by a show-cause notice to which the appellant had already submitted its explanation. Mere fact that a show-cause notice has been prepared and sent subsequent to the order of suspension would not make the order of suspension a void one.

11. In **Commissioner of C.S., Hyderabad and Others Vs. Radha Automobiles, Hyderabad (1990 (2) LS 30)** another Division Bench of this Court observed that "a bare look at sub-clause (2) of Clause 28 would show that this sub-clause can be resorted to only pending action as contemplated in sub-clause (1). Again no action till today, has been initiated against the respondent under sub-clause (1) of Clause 28. Therefore, Clause 28 could also not be resorted to."

12. Even the said judgment upon which reliance has been placed by the learned Counsel for the appellant does not support the contention urged by him. In our considered opinion, it would be enough if action has been initiated as contemplated in sub-clause (1) of Clause 28 which enables the licensing authority to pass appropriate order of suspension in exercise of the power under sub-clause (2) of Clause 28. Both can simultaneously be made."

A reading of the impugned order shows that on a check made by the competent authority petroleum products were seized and the respondent came to a prima facie conclusion that

management of the petitioner contravened clause 12(i)(ii) and Clause 20 of the 1980 Order and invoked the provisions of Clause 28(2). It is mentioned in the order as under:

> " In view of the above circumstances in exercise of powers conferred under clause 28(2) of APPP (L&RS) Order, 1980 the license bearing No.13/92 granted in favour of M/s.VLG Mallesham & Co.IPC wholesale kerosene dealer, Peddapalli is hereby suspended until further orders pending completion of inquiry."

On an examination of the facts of the present case and the case decided by the Division Bench in **Gummadisetti (2 supra),** I find that both the cases are identical. Even in **Gummadisetti** before issuing any show-cause notice, the power under Clause 28(2) was invoked as in this case. The Division Bench sustained the said order while confirming the order of the learned Single Judge who declined to interfere with the order of suspension.

Following the aforementioned finding, ordinarily this writ petition ought to be dismissed. However, a perusal of the record shows that this Court on 13.11.2002 granted interim suspension of the order of the respondent impugned in this writ petition. Since then, the petitioner is continuing in the business. Having regard to these facts, I feel it appropriate that the petitioner shall be allowed to continue with the dealership till such time as the respondent disposes of the proceedings under Clause 28(1) of the 1980 Order. The learned Assistant Government Pleader says that in view of the pendancy of the writ petition and the order of interim suspension granted by this Court, the respondent has not proceeded with the enquiry under Clause 28(1).

I therefore deem it appropriate to direct the respondent to complete the proceedings under Clause 28(1) within a period of six weeks from the date of receipt of a copy of this order after giving opportunity of hearing to the petitioner. Till such time as the respondent passes a final order under Clause 28(1), the petitioner shall be allowed to continue as the dealer.

The writ petition is accordingly disposed of. No order as to costs.

C.V.NAGARJUNA REDDY,J

Dt :04.07.2007
Mdaa.

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[1] 2003(1) ALD Crl. 430 (AP)
[2] 2004 (1) ALD 535 (DB)
[3] 1990 (2) LS 30
[4] 1999 (1) LS 89